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EXAMINER

KOPPIKAR, VIVEK D

ART UNIT

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/941,841	<b>Applicant(s)</b> MAYAUD, CHRISTIAN	
	<b>Examiner</b> VIVEK D. KOPPIKAR	<b>Art Unit</b> 3626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 5/12/08.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 70-84 and 86-115 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 70-84 and 86-115 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Status of the Application***

1. Claims 70-84 and 86-115 are pending and have been examined in this application.

This is a non-final Office Action in response to the Request for Continued Examination (RCE) filed on May 12, 2008.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 70-77, 81-82, 84, 86, 91-97, 99, 102-107, 111-113 and 115 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kirk in view of “Lunar Radiation Corp.” and in further view of US Patent Number 5,301,105 to Cummings.

(A) As per amended claim 70, Kirk teaches a computerized prescription system (Kirk: Abstract):

at least one user computer, said user computer having a graphical user interface for displaying and providing access to (1) a plurality of patient records for separate patients, each patient record including information about a patient's prescription history (Kirk: Figure 2; Col. 1, Ln. 50-Col. 2, Ln. 3; and Col. 3, Ln. 3-7 and Ln. 20-42; and Col. 3, Ln. 58-Col. 4, Ln. 7).

Kirk does not teach that (2) information about pharmaceuticals (regarding) medical conditions for which the pharmaceuticals are suitable for treating, however, this feature is taught by “Lunar Radiation Corp” (Main Paragraph, Sentence 2). At the time

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of the invention it would have been obvious for one of ordinary skill in the art to have modified the system of Kirk with the aforementioned feature from “Lunar Radiation Corp.” with the motivation of giving users of the system a more efficient and meaningful means of managing patient data, as recited in “Lunar Radiation Corp.” (Main Paragraph, Sentence 4).

Kirk in view of “Lunar Radiation Corp.” does not teach or suggest that the information about pharmaceuticals is correlated with medical conditions (e.g. use of a drug) for which the pharmaceuticals are suitable for treating, said information derived from at least two of said plurality of patient records, however, this feature is taught in Cummings (Cummings: Col. 9, Ln. 66-Col. 10, Ln. 8). At the time of the invention, it would have been obvious for one of ordinary skill in the art to have modified the combined system of Kirk in view of “Lunar Radiation Corp.” with the aforementioned feature from Cummings with the motivation of assisting a healthcare provider in identifying a recommended treatment protocol for a given diagnosis, as recited in Cummings (Detailed Description: Paragraph 33).

(B) As per claim 71, in Kirk the user computer is connected to a communications medium by which said user computer may communicate with one or more other computers (Figure 5 and Col. 4, Ln. 34-46).

(C) As per claim 72, in Kirk one or more computers includes at least one computer run by or on behalf of at least one of (1) a Health Maintenance Organization, (2) a hospital, (3) an insurance company, (4) a drug benefit plan, (5) a pharmacy, (6) a laboratory, and (7) a physician practice (Col. 3, Ln. 20-42).

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(D) As per claim 73, in Kirk the user computer is configured to gather information from more than one of said one or more computers and presents that information to a user upon request submitted through said graphical user interface (Figure 4; Col. 3, Ln. 23-24 and Col. 4, Ln. 47-Col. 5, Ln. 6)

(E) As per claim 74, in Kirk the user computer is configured to gather information from more than one of said one or more computers and compile that information into a prescription history for a patient (Figure 1; Col. 3, Ln. 23-24; Col. 3, Ln. 43-Col. 4, Ln. 7 and Col. 5, Ln. 55-Col. 6, Ln. 5)

(F) As per claim 75, in Kirk the user computer is configured to gather information from more than one of said one or more computers and compile that information into said information about pharmaceuticals (Figure 1 and Col. 4, Ln. 46-Col. 5, Ln. 5).

(G) As per claim 76, in Kirk the user computer is configured to gather information from more than one of said one or more computers and compile that information into said information about the properties of pharmaceuticals (Col. 4, Ln. 46-68)

(H) As per claim 77, in Kirk the graphical user interface permits a user to receive a prescription directly from a point of care provider over said communications medium (Figures 1 and 4; Col. 2, Ln. 35-42 and Col. 5, Ln. 55-Col. 6, Ln. 5)

(I) As per claim 81, in Kirk when a pharmaceutical is prescribed for a condition, and the pharmaceutical is not the best first line agent for treatment of that condition, the graphical user interface will suggest an alternative pharmaceutical to be prescribed instead (Col. 5, Ln. 28-32).

(J) As per claim 82, in Kirk the guidelines relating to the use of said alternative pharmaceutical may be retrieved using said graphical user interface (Col. 5, Ln. 28-32).

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(K) As per claim 84, Kirk teaches a computer implemented method of formatting an electronic prescription (Kirk: Abstract), comprising the steps of:

- a. assembling a plurality of patient records from separate patients, using a computer interface, the prescription information including a patient condition associated with a prescription (Kirk: Col. 2, Ln. 10-30, Col. 3 Ln. 20-44, Col. 3, Ln. 58-Col. 4, Ln. 7 and Col. 4, Ln. 47-Col. 5, Ln. 21 and Col. 5, Ln. 22-27);
- b. the prescription information having been formatted for communications (Kirk: Col. 4, Ln. 47-Col. 5, Ln. 21).
- c. receiving said prescription information at a pharmacy over a communication link (Kirk: Figure 2 and Col. 3, Ln. 20-42).

Kirk does not teach the step of including a patient condition associated with a prescription, however, this feature is taught by “Lunar Radiation Corp” (Main Paragraph, Sentence 2). At the time of the invention it would have been obvious for one of ordinary skill in the art to have modified the system of Kirk with the aforementioned feature from “Lunar Radiation Corp.” with the motivation of giving users of the system a more efficient and meaningful means of managing patient data, as recited in “Lunar Radiation Corp.” (Main Paragraph, Sentence 4).

The combined method of Kirk in view of “Lunar Radiation Corp.” do not teach the following steps which are taught by Cummings (Detailed Description: Paragraph 33):

sorting the received prescription information from at least two patient records to create a list of pharmaceuticals correlated with the medical conditions for which the pharmaceuticals were prescribed and outputting the list.

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At the time of the invention, it would have been obvious for one of ordinary skill in the art to have modified the combined system of Kirk in view of “Lunar Radiation Corp.” with the aforementioned feature from Cummings (Detailed Description: Paragraph 33). At the time of the invention, it would have been obvious for one of ordinary skill in the art to have modified the combined system of Kirk in view of “Lunar Radiation Corp.” with the aforementioned feature from Cummings with the motivation of assisting a healthcare provider in identifying a recommended treatment protocol for a given diagnosis, as recited in Cummings (Detailed Description: Paragraph 33).

(L) As per claim 86, in Kirk the prescription information is selected from a predefined list (Col. 3, Ln. 38-42).

(M) As per claim 91, Kirk teaches a computerized prescription system (Kirk: Abstract), comprising:

at least one user computer, said user computer having a graphical user interface permitting display of prescription information received from a prescriber and providing access to: at least one user computer, said user computer having a graphical user interface permitting display of prescription information received from a prescriber and providing access to one or more of (1) information about a plurality of medical histories each medical history of a separate patient (2) information about therapeutic agents and (3) information about individual prescriber activity (Kirk: Figures 1-2; Col. 1, Ln. 50-Col. 2, Ln. 3, Col. 3, Ln. 20-42, Col. 3, Ln. 58-Col. 4, Ln. 7 and Col. 5, Ln. 22-27).

Kirk does not teach the steps of including at least one medical condition of a patient of a separate patient or including information regarding the medical condition for which a therapeutic agent is prescribed for, however, this feature is taught by “Lunar

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Radiation Corp.” (Main Paragraph, Sentence 2). At the time of the invention it would have been obvious for one of ordinary skill in the art to have modified the system of Kirk with the aforementioned feature from “Lunar Radiation Corp.” with the motivation of giving users of the system a more efficient and meaningful means of managing patient data, as recited in “Lunar Radiation Corp.” (Main Paragraph, Sentence 4).

The combined system of Kirk in view of “Lunar Radiation Corp.” does not teach or suggest the following feature which is taught by Cummings (Detailed Description: Paragraph 33):

a sorting device for sorting information from at least two of said plurality of medical histories to produce a report correlating at least one individual prescriber with at least one therapeutic agent prescribed by said at least one individual prescriber and with said at least one medical condition for which said at least one therapeutic agent was prescribed by said at least one individual prescriber.

At the time of the invention, it would have been obvious for one of ordinary skill in the art to have modified the combined system of Kirk in view of “Lunar Radiation Corp.” with the aforementioned feature from Cummings with the motivation of assisting a healthcare provider in identifying a recommended treatment protocol for a given diagnosis, as recited in Cummings (Detailed Description: Paragraph 33).

(N) As per claim 92, in Kirk information of an individual prescriber is stored on said user computer and also on another computer (Figures 1 and 5; Col. 4, Ln. 34-46; Col. 5, Ln. 55-Col. 6, Ln. 5).



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(O) As per claim 93, in Kirk information about a medical history includes identification of one or more prescriptions and an identification (verification) of a person who prescribed said one or more prescriptions (Figures 1 and 4 and Col. 4, Ln. 47-61).

(P) As per claim 94, Kirk teaches that the identification of a person who prescribed one or more prescriptions includes identification of how to contact (telephone numbers) the person who prescribed one or more prescriptions (Figures 1-5; Col. 3, Ln. 20-42 and Col. 5, Ln. 21-27).

(Q) As per claim 95, in Kirk the graphical user interface includes providing suggestions to a provider (deviations from prescribed schedules) if dosages do not reflect said patient's medical history (Figures 1 and 3-4; Col. 5, Ln. 40-Col. 6, Ln. 5).

(R) As per claim 96, Kirk teaches a computer program product, comprising (Kirk: Abstract):

- a. a memory medium (Kirk: Col. 3, Ln. 43-61); and
- b. a computer program stored on said memory medium, said computer program containing instructions for capturing prescription information and providing access to one or more of (1) a plurality of patient records for separate patients, each patient record including information about a patient's prescription history, and (2) information about pharmaceuticals (Kirk: Col. 3, Ln. 20-42, Co. 3, Ln. 58-Col. 4, Ln. 7, Col. 4, Ln. 46-68 and Col. 5, Ln. 22-27).

Kirk does not teach the steps of including at least one medical condition of a patient or including information regarding the medical condition for which a therapeutic agent is prescribed for, however, this feature is taught by "Lunar Radiation Corp" (Main Paragraph, Sentence 2). At the time of the invention it would have been obvious for one

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of ordinary skill in the art to have modified the system of Kirk with the aforementioned feature from “Lunar Radiation Corp.” with the motivation of giving users of the system a more efficient and meaningful means of managing patient data, as recited in “Lunar Radiation Corp.” (Main Paragraph, Sentence 4).

The combined system of Kirk in view of “Lunar Radiation Corp.” does not teach or suggest the following feature which is taught by Cummings (Detailed Description: Paragraph 33):

a sorting device for sorting information from at least two of said plurality of medical histories to produce a report correlating at least one individual prescriber with at least one therapeutic agent prescribed by said at least one individual prescriber and with said at least one medical condition for which said at least one therapeutic agent was prescribed by said at least one individual prescriber.

At the time of the invention, it would have been obvious for one of ordinary skill in the art to have modified the combined system of Kirk in view of “Lunar Radiation Corp.” with the aforementioned feature from Cummings with the motivation of assisting a healthcare provider in identifying a recommended treatment protocol for a given diagnosis, as recited in Cummings (Detailed Description: Paragraph 33).

(S) As per claim 97, Kirk teaches a computer program product (Kirk: Abstract), comprising:

- a. a memory medium (Kirk: Col. 3, Ln. 43-61); and
- b. a computer program stored on said memory medium, said computer program containing instructions (Figures 1 and 4; Col. 3, Ln. 20-42 and Col. 4, Ln. 8-68).

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Kirk does not teach the steps of including at least one medical condition of a patient or including information regarding the medical condition for which a therapeutic agent is prescribed for, however, this feature is taught by “Lunar Radiation Corp” (Main Paragraph, Sentence 2). At the time of the invention it would have been obvious for one of ordinary skill in the art to have modified the system of Kirk with the aforementioned feature from “Lunar Radiation Corp.” with the motivation of giving users of the system a more efficient and meaningful means of managing patient data, as recited in “Lunar Radiation Corp.” (Main Paragraph, Sentence 4).

Kirk does not teach that the computer program product contains instructions for receiving prescription information from a plurality of records each relating to a separate patient, said prescription information for each record including a patient condition associated with a prescription, sorting the received prescription information from at least two records to create a list of pharmaceuticals correlated with the medical conditions for which the pharmaceuticals were prescribed, and outputting the list, however, this feature is taught by the combined system of Kirk in view of “Lunar Radiation Corp.” does not teach or suggest the following feature which is taught by Cummings (Cummings: Col. 9, Ln. 66-Col. 10, Ln. 8):

a sorting device for sorting information from at least two of said plurality of medical histories to produce a report correlating at least one individual prescriber with at least one therapeutic agent prescribed by said at least one individual prescriber and with said at least one medical condition for which said at least one therapeutic agent was prescribed by said at least one individual prescriber.

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At the time of the invention, it would have been obvious for one of ordinary skill in the art to have modified the combined system of Kirk in view of “Lunar Radiation Corp.” with the aforementioned feature from Cummings with the motivation of assisting a healthcare provider in identifying a recommended treatment protocol for a given diagnosis, as recited in Cummings (Detailed Description: Paragraph 33).

(T) As per claim 99, Kirk teaches a computer program product (Kirk: Abstract), comprising:

- a. a memory medium (Kirk: Col. 3, Ln. 43-61); and
- b. a computer program stored on said memory medium, said computer program containing instructions for implementing a graphical user interface permitting display of prescription information and permitting access to one or more of (1) information about a plurality of medical histories, (2) information about therapeutic agents and (3) information about individual prescriber activity (Kirk: Figures 1 and 4; Col. 3, Ln. 20-42 and Col. 4, Ln. 46-68).

Kirk does not teach the steps of including at least one medical condition of a patient or including information regarding the medical condition for which a therapeutic agent is prescribed for, however, this feature is taught by “Lunar Radiation Corp.” (Main Paragraph, Sentence 2).

At the time of the invention it would have been obvious for one of ordinary skill in the art to have modified the system of Kirk with the aforementioned feature from “Lunar Radiation Corp.” with the motivation of giving users of the system a more efficient and meaningful means of managing patient data, as recited in “Lunar Radiation Corp.” (Main Paragraph, Sentence 4).

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The combined product of Kirk in view of “Lunar Radiation Corp.” does not teach the following feature which is taught by the combined system of Kirk in view of “Lunar Radiation Corp.” does not teach or suggest the following feature which is taught by Cummings (Detailed Description: Paragraph 33):

a sorting device for sorting information from at least two of said plurality of medical histories to produce a report correlating at least one individual prescriber with at least one therapeutic agent prescribed by said at least one individual prescriber and with said at least one medical condition for which said at least one therapeutic agent was prescribed by said at least one individual prescriber.

At the time of the invention, it would have been obvious for one of ordinary skill in the art to have modified the combined system of Kirk in view of “Lunar Radiation Corp.” with the aforementioned feature from Cummings with the motivation of assisting a healthcare provider in identifying a recommended treatment protocol for a given diagnosis, as recited in Cummings (Detailed Description: Paragraph 33).

a computer program containing instructions for sorting the information from at least two of the plurality of medical histories to produce a report correlating at least one individual prescriber with at least one therapeutic agent prescribed by said at least one individual prescriber and with said at least one medical condition for which said at least one therapeutic agent was prescribed by said at least one individual prescriber, and outputting said report.

At the time of the invention, it would have been obvious for one of ordinary skill in the art to have modified the combined system of Kirk in view of “Lunar Radiation Corp.” with the aforementioned feature from Cummings with the motivation of assisting

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a healthcare provider in identifying a recommended treatment protocol for a given diagnosis, as recited in Cummings (Detailed Description: Paragraph 33).

(U) As per claim 102, Kirk teaches a computerized prescription system (Kirk: Abstract), comprising:

at least one user computer, said user computer having a graphical user interface permitting capture of prescription information and providing access to all of (1) information about a plurality of prescription histories, (2) information about pharmaceuticals, and (3) information about the properties of pharmaceuticals, wherein said user computer is connected to a communication medium by which said user computer communicates with one or more other computers run respectively by or on behalf of one or more of a group consisting of (a) a Health Maintenance Organization, (b) an insurance company, (c) a drug benefit plan, (d) a pharmacy run by a different organization than the organization running the user computer, (e) a laboratory, and (f) a physician practice (Kirk: Figures 1, 3-4; Col. 3, Ln. 20-42 and Col. 4, Ln. 46-68).

Kirk does not teach the steps of including at least one medical condition of a patient or including information regarding the medical condition for which a therapeutic agent is prescribed for, however, this feature is taught by "Lunar Radiation Corp." (Main Paragraph, Sentence 2). At the time of the invention it would have been obvious for one of ordinary skill in the art to have modified the system of Kirk with the aforementioned feature from "Lunar Radiation Corp." with the motivation of giving users of the system a more efficient and meaningful means of managing patient data, as recited in "Lunar Radiation Corp." (Main Paragraph, Sentence 4).

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Kirk in view of “Lunar Radiation Corp.” do not teach or suggest that the information about pharmaceuticals is correlated with the medical conditions for which the pharmaceuticals are suitable for treating, said information about pharmaceuticals being derived from at least two of said plurality of prescription histories, however, this feature is well known in the healthcare industry as evidenced by Cummings (Detailed Description: Paragraph 33). At the time of the invention, it would have been obvious for one of ordinary skill in the art to have modified the combined system of Kirk in view of “Lunar Radiation Corp.” with the aforementioned feature from Cummings (Detailed Description: Paragraph 33):

At the time of the invention, it would have been obvious for one of ordinary skill in the art to have modified the combined system of Kirk in view of “Lunar Radiation Corp.” with the aforementioned feature from Cummings with the motivation of assisting a healthcare provider in identifying a recommended treatment protocol for a given diagnosis, as recited in Cummings (Detailed Description: Paragraph 33).

(V) As per claim 103, in Kirk the user computer is configured to gather information from more than one of said one or more computers and presents that information to a user upon request submitted through said graphical user interface (Kirk: Col. 3, Ln. 20-61 and Col. 4, Ln. 46-68)

(W) As per claim 104, in Kirk in which the user computer is configured to gather information from more than one of said one or more computers and compile that information into a prescription history for a patient (Kirk: Col. 3, Ln. 20-61 and Col. 4, Ln. 27-68).

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(X) As per claim 105, in Kirk the user computer is configured to gather information from more than one of said one or more computers and compile that information into said information about pharmaceuticals (Kirk: Col. 4, Ln. 46-68)

(Y) As per claim 106, in Kirk the user computer is configured to gather information from more than one of said one or more computers and compile that information into said information about the properties of pharmaceuticals (Kirk: Col. 4, Ln. 46-68)

(Z) As per claim 107, in Kirk the graphical user interface permits a user to send a prescription directly to a pharmacy to be filled over said communications medium (Kirk: Figures 1 and 3-4 and Col. 2, Ln. 55- Col. 3, Ln. 12).

(AA) As per claim 111, in Kirk when a pharmaceutical is prescribed for a condition, and the pharmaceutical is not the best first line agent for treatment of that condition, the graphical user interface will suggest an alternative pharmaceutical to be prescribed instead (Kirk: Col. 5, Ln. 28-32).

(AB) As per claim 112, in Kirk the guidelines relating to the use of said alternative pharmaceuticals may be retrieved using the graphical user interface (Kirk: Figures 1 and Col. 5, Ln. 22-32).

(AC) As per claim 115, Kirk teaches a computerized prescription system (Kirk: Abstract), comprising:

at least one user computer, said user computer having a graphical user interface permitting capture of prescription information and providing access to all of (1) information about a plurality of medical histories, (2) information about therapeutic agents and (3) information about individual prescriber activity, wherein the information



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in (1), (2) and (3) is obtained from only databases located remotely from the location of the said user computer (Figure 2; Col. 1, Ln. 50-Col. 2, Ln. 34; Col. 3, Ln. 20-42).

Kirk does not teach the steps of including at least one medical condition of a patient or including information regarding the medical condition for which a therapeutic agent is prescribed for, however, this feature is taught by “Lunar Radiation Corp.” (Main Paragraph, Sentence 2). At the time of the invention it would have been obvious for one of ordinary skill in the art to have modified the system of Kirk with the aforementioned feature from “Lunar Radiation Corp.” with the motivation of giving users of the system a more efficient and meaningful means of managing patient data, as recited in “Lunar Radiation Corp.” (Main Paragraph, Sentence 4).

Kirk in view of “Lunar Radiation Corp.” does not teach or suggest the following feature which is taught by Cummings (Detailed Description: Paragraph 33):

a sorting device for sorting information from at least two of said plurality of medical histories to produce a report correlating at least one individual prescriber with at least one therapeutic agent prescribed by said at least one individual prescriber and with said at least one medical condition for which said at least one therapeutic agent was prescribed by said at least one individual prescriber.

At the time of the invention, it would have been obvious for one of ordinary skill in the art to have modified the combined system of Kirk in view of “Lunar Radiation Corp.” with the aforementioned feature from Cummings with the motivation of assisting a healthcare provider in identifying a recommended treatment protocol for a given diagnosis, as recited in Cummings (Detailed Description: Paragraph 33).

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4. Claims 78-80, 83, 87-90, 108-110 and 113 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kirk, as applied to Claims 70, 84, 102, above in view of US Patent Number 5,774,879 to Custy.

(A) Claims 78-80, 83, 87-90, 108-110 and 113 are directed towards customized methods of arranging and sorting data. This feature is not taught in Kirk, however, it is well known in the art as evidenced by Custy (Col. 15, Ln. 38-53). At the time of the invention it would have been obvious for one of ordinary skill in the art to have modified the health support system of Kirk with the customized data arranging and sorting feature as taught in Custy with the motivation of providing the user with a means of producing customized reports or modifying existing reports, as recited in Custy (Col. 39-41).

5. Claim 100 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kirk in view of "Lunar Radiation Corp." and in further view of the "How restrictive is your formulary?" by Greg Muirhead.

(A) As per claim 100, Kirk teaches a prescription fulfillment software system implemented on a computer comprising a program embodied on a computer-readable medium, the system being for use by pharmacy personnel to fill an electronic prescription prescribing a drug treatment for a patient condition exhibited by a patient, the patient having a drugs benefit provider, the drugs benefit provider issuing a prescription benefit plan including a drug formulary for the patient listing at least one drug preferred by the drugs benefit provider for treatment of the condition, the electronic prescription comprising a patient identifier, at least one prescribed drug and at least one drug quantifier for the prescribed drug (Col. 3, Ln. 20-61 and Col. 4, Ln. 46-68), the prescription fulfillment system providing:

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a) a prescription screen display (Figures 1 and 3-4 and Col. 3, Ln. 20-61), displaying:

- i) patient-identifying data (Col. 3, Ln. 48-51);
- ii) prescribed drug identification data (Col. 4, Ln. 46-68);
- iii) drug quantification data (Col. 4, Ln. 59-61); and

Kirk does not teach the following limitation which is taught by Muirhead (Full Text Section: Paragraph 1):

b) drug formulary information identifying at least one of multiple drugs as a patient's drug benefit provider's drug formulary preferences to ensure that the electronic prescriptions is filled with a benefit plan recommended drug.

At the time of the invention, it would have been obvious for one of ordinary skill in the art to have modified Kirk with the aforementioned feature from Muirhead with the motivation of having a means of ensuring that pharmacists have a means of complying with managed care organization or drug benefit plan provider's rules, as recited in Muirhead (Full text: Paragraphs 1 and 3).

6. Claim 101 is rejected as being unpatentable over Kirk in view Muirhead and in even further view of "Possible interactions with terfenadine or astemizole" by Andrew Zechnich (hereinafter referred to as Zechnich).

(A) As per claim 101, Kirk teaches a prescription fulfillment software system implemented on a computer comprising a program embodied on a computer-readable medium, the system being for use by pharmacy personnel to fill an electronic prescription prescribing a drug treatment for a patient condition exhibited by a patient, the patient having a drugs benefit provider, the drugs benefit provider issuing a prescription benefit

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plan including a drug formulary for the patient listing at least one drug preferred by the drugs benefit provider for treatment of the condition, the electronic prescription comprising a patient identifier, at least one prescribed drug and at least one drug quantifier for the prescribed drug (Col. 3, Ln. 20-61 and Col. 4, Ln. 46-68), the prescription fulfillment system providing:

- a) a prescription screen display (Figures 1 and 3-4 and Col. 3, Ln. 20-61), displaying:
  - i) patient-identifying data (Col. 3, Ln. 48-51);
  - ii) prescribed drug identification data (Col. 4, Ln. 46-68);
  - iii) drug quantification data (Col. 4, Ln. 59-61); and

Kirk does not teach the following limitation which is taught by Muirhead (Full Text Section: Paragraph 1):

- b) drug formulary information identifying at least one of multiple drugs as a patient's drug benefit provider's drug formulary preferences to ensure that the electronic prescriptions is filled with a benefit plan recommended drug.

At the time of the invention, it would have been obvious for one of ordinary skill in the art to have modified Kirk with the aforementioned feature from Muirhead with the motivation of having a means of ensuring that pharmacists have a means of complying with managed care organization or drug benefit plan provider's rules, as recited in Muirhead (Full text: Paragraphs 1 and 3).

Kirk does not teach a drug contraindication review routine automatically activatable from the prescription fulfillment system prior to fulfillment, the drug contraindication review routine accessing contraindication information regarding the

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prescribed drug and generating an alert regarding a relevant such contraindication. The aforementioned feature, although not present in Kirk, is nevertheless well known in the art as evidenced by Zechnich (Zechnich: Page 6 (1st and 2nd full paragraphs)) (Note: Zechnich does not explicitly state that an alert is generating upon detecting a contraindication, however, the Office takes the position that this feature is inherent because otherwise, if no alert was generated, then the pharmacist using the system of Zechnich would not be notified of a contraindication.). At the time of the invention it would have been obvious to one of ordinary skill in the art to have modified the health support system of Kirk with the aforementioned feature from Zechnich with the motivation of having a convenient means of complying with the Omnibus Budget Reconciliation Act of 1990, as recited in Zechnich (Page 6 (1st full paragraph)).

7. Claim 98 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kirk in view of US Patent Number 5,307,662 to Ertel.

(A) As per claim 98, Kirk teaches a computer program product (Kirk: Abstract), comprising:

- a. a memory medium (Kirk: Col. 3, Ln. 41-63) ; and
- b. a computer program stored on said memory medium, said computer program containing instructions for interrogating databases expected to contain information about a patient based on a patient's relationship with the provider of that database and for assembling patient information into a chronologically current version of said patient's prescription history (Kirk: Figures 1 and 4; Col. 3, Ln. 20-42; Col. 4, Ln. 35-42 and Ln. 46-68 and Col. 5, Ln. 22-27).

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In Kirk there is not a means wherein the chronologically current version of said patient's prescription history being displayed but not being permanently stored, however, this feature is well known in the art as evidenced by Ertel (Col. 38, Ln. 15-20). At the time of the invention, it would have been obvious for one of ordinary skill in the art to have modified Kirk with the aforementioned teachings from Ertel with the motivation of having a means wherein temporarily files which are of use only for a short period of time are not permanently stored and therefore do not permanently take up precious storage capacity on a computer.

8. Claim 114 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kirk as applied to Claim 102 and in even further view of Official Notice.

In Kirk the user computer is not a personal digital assistant. However Kirk does suggest that a portable computer can be used as part of the health support system (Figure 3). Furthermore, the examiner takes Official Notice with respect to using a personal digital assistant as a user computer. At the time of the invention it would have been obvious for one of ordinary skill in the art to have used a personal digital assistant as a user computer with the motivation of having an easily transportable and portable means of accessing the health support system taught by Kirk.

### ***Response to Arguments***

9. Applicant's arguments filed on May 12, 2008 have been fully considered but they are not persuasive. Applicants arguments will be addressed in sequential order as they were presented in the

(1) As an initial matter, Applicant's argument that the Cummings reference does not teach a drug benefit provider's drug formulary preferences is moot in view of the

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new grounds of rejection over the Muirhead reference. Applicant's argument that the cited prior art references do not show a drug contraindication review routine automatically activatable from the prescription fulfillment system prior to fulfillment, the drug contraindication review routine accessing contraindication information regarding the prescribed drug and generating an alert regarding a relevant such contraindication, is moot in view of the new grounds of rejection over the Zechnich reference.

(2) In response to applicant's argument that "Lunar Radiation Corp." is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, the "Lunar Radiation Corp." reference is directed towards solving the problem of providing information about pharmaceuticals regarding what medical conditions they are suitable for treating and the applicant's invention, at least in part, is also attempting to solve this problem, therefore the Office takes the position that the "Lunar Radiation Corp." reference is analogous art.

(3) Applicants argue that the prior art references of record do not teach or suggest information about pharmaceuticals correlated with medical conditions for which the pharmaceuticals are suitable for treating, said information derived from at least two of a plurality of patient records. However, the Office would like to point out that Cummings teaches information about pharmaceuticals correlated with medical conditions for which the pharmaceuticals are suitable for treating (Cummings: Col. 9, Ln. 66-Col. 10, Ln. 8). In this cited portion, Cummings discusses that a physician or physician's staff member

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enters into the system data identifying the proposed pattern of treatment and the system then returns a recommended treatment protocol. The Office interprets this passage as meaning, for example, that a patient who has been diagnosed with depression would be entered into the system along with a proposed pattern of treatment, which in this example could be Prozac. The system of Cummings would then return any differences between the proposed plan of treatment and any protocols. Therefore, in this example if a protocol for treating depression called for prescribing a medicine other than Prozac, then this medicine would be returned. At the end of this process, then, there is a list of pharmaceuticals, in this case Prozac and any other medicine, correlated with medical conditions, in this case depression, for which the pharmaceuticals are suitable for treating.

The Kirk reference teaches information derived from at least two of the plurality of patient records because Kirk teaches that multiple health support units can be used and each health support unit can be used to support up to two (separate) patients each. In addition each health support unit is capable of accessing patient data (interrogating databases) (Kirk: Col. 3, Ln. 58-Col. 4, Ln. 7).

(4) Applicants argue that there is nothing in Kirk that teaches or suggests interrogating databases for assembling a chronologically current version of the patient's prescription history. However, the Office interprets the phrase "interrogating databases" to mean a search or retrieval of a database and Kirk does teach this feature (Kirk: Col. 5, Ln. 22-27). In this cited portion, Kirk discusses that the health support unit reports patient compliance data from communicating (or interrogating) with a local central server. In addition, Kirk teaches a monitoring service (Kirk: Col. 3, Ln. 35-42). The



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Office interprets the word "monitor" to mean a device which reports current conditions or in this case a chronologically current version of a patient's prescription history. Finally, the Office notes that the Ertel reference is simply used to teach the feature that a list of a patient's chronologically current version of a patient's prescription history being displayed but not permanently stored (Ertel: Col. 38, Ln. 15-20). The cited portion of Ertel discusses generating data which is ultimately reported (displayed) but is then purged (not permanently stored).

### ***Conclusion***

10. Any inquire concerning this communication or earlier communications from the examiner should be directed to Vivek Koppikar, whose telephone number is (571) 272-5109. The examiner can normally be reached from Monday to Friday between 8 AM and 4:30 PM.

If any attempt to reach the examiner by telephone is unsuccessful, the examiner's supervisor, Joseph Thomas, can be reached at (571) 272-6776. The fax telephone numbers for this group are either (571) 273-8300 or (703) 872-9326 (for official communications including After Final communications labeled "Box AF").

Another resource that is available to applicants is the Patent Application Information Retrieval (PAIR). Information regarding the status of an application can be obtained from the (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAX. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the

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Private PAIR system, please feel free to contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sincerely,

/Vivek D Koppikar/

Primary Examiner, Art Unit 36268/1/2008